

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

<p>RANDALL MOYER,</p> <p>Petitioner,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA,</p> <p>Respondent.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING PETITIONER'S MOTION TO SET ASIDE JUDGMENT</p> <p>Civil Case No. 2:08-CV-700 TS Criminal Case No. 2:04-CR-387 TS</p>
---	--

This matter comes before the Court on Petitioner's Motion to Set Aside Judgment. For the reasons discussed below, the Court will deny the Motion.

Petitioner filed his original Motion pursuant to 28 U.S.C. § 2255, on September 15, 2008.<sup>1</sup> On September 17, 2008, the Court ordered the government to respond to the Motion within 60 days and allowed Petitioner to file a voluntary reply 30 days thereafter.<sup>2</sup> The government filed its response on September 30, 2008, and served its response on Petitioner.<sup>3</sup>

---

<sup>1</sup>Civil Case No. 2:08-CV-700 TS, Docket No. 1.

<sup>2</sup>Civil Case No. 2:08-CV-700 TS, Docket No. 2.

<sup>3</sup>Civil Case No. 2:08-CV-700 TS, Docket No. 4. The Certificate of Service indicates that Petitioner was mailed a copy of the government's Response on September 24, 2008.

Having received no reply from Petitioner, the Court ruled on Petitioner's Motion on November 3, 2008.<sup>4</sup>

Petitioner now brings the instant Motion arguing that he did not receive a copy of the government's Response and, thus, did not have the opportunity to file a reply brief. Petitioner requests the Court set aside the decision denying Petitioner's § 2255 Motion.

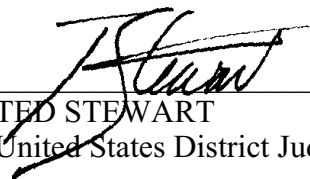
The Court finds Petitioner's arguments to be without merit. The government's Response indicates that it was served on Petitioner on September 24, 2008. There is no evidence that Petitioner did not receive a copy of that Response. The Court must, therefore, rely upon the Certificate of Service, which indicates that Petitioner was mailed a copy of the Response. Further, the Court disposed of Petitioner's Motion on the merits after consideration of all the materials in the file. The Court finds that Petitioner's requested relief is inappropriate.

It is therefore

ORDERED that Petitioner's Motion to Set Aside (Docket No. 6) is DENIED.

DATED this 15th day of December, 2008.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

---

<sup>4</sup>Civil Case No. 2:08-CV-700 TS, Docket No. 5.